

City of Seattle

Proposed DBE Goal and Goal Setting Methodology For Federal Fiscal Year 2010 (FFY 2010)

The South Lake Union Streetcar Extension Design (the “Streetcar”) and the Monorail Rehab (Conductor Rail) (the “Monorail”) have been identified as the Federal Transit Administration, U.S. Department of Transportation (FTA-DOT) assisted projects used to establish the City of Seattle’s FFY 2010 Disadvantaged Business Enterprise (DBE) Goal.

INTRODUCTION

As required by Part 26.45, the City of Seattle is required to establish an overall goal. This goal “...must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on our DOT assisted contracts.”

In accordance with DOT's final rule, a two (2) step process was developed:

- "Step 1" provided a process for determining a Base Figure for the overall goal; and
- "Step 2" provided guidance for making adjustments to the Base Figure.

The first step in establishing this goal involves the calculation of the Base Figure for the relative availability of DBEs. The Base Figure is the ratio (percentage) of certified DBE's relative to the total firms available in the relevant region.

The DOT also recognized that agencies needed flexibility, with some underlying guidance, on measuring or measurements of availability based upon market conditions. Thus, the second step allows that once the Base Figure has been calculated, a recipient must examine all of the available evidence in its area to determine whether any adjustment is needed to the Base Figure in order to arrive at an overall goal. Specific types of evidence that must be considered are as follows:

- The current capacity of DBEs to perform work on [the recipient's] DOT-assisted contracts, as measured by the volume of work DBEs have performed in recent years;
- Evidence from disparity studies conducted anywhere in [the recipient's] jurisdiction, to the extent that it is not already accounted for in the Base Figure; and
- If the Base Figure is the goal of another recipient, the goal must be adjusted for differences in the submitting agency's local market and contracting program.

The DOT has mandated that the Base Figure calculation arrived at is based upon relevant market conditions. This approach has been incorporated into the City's "Base Figure for the Disadvantaged Business Enterprise (DBE) Goal".

This Disadvantaged Business Enterprise (DBE) Goal Submittal is based on federal funded contracting for activity pertaining to contracts that will be let in FFY2010 for the City of Seattle's capital projects.

Authority to Use the Sound Transit Methodology

Under Part 26, a recipient of DOT funds, such as the City of Seattle, may use another DOT recipient's goal as its Base Figure when that other recipient is in the same or substantially similar market and that recipient's goal is in compliance with the rule.

Consistent with Part 26 and as described below, the City of Seattle has decided to use a portion of the methodology used by the Central Puget Sound Regional Transit Authority (Sound Transit) for calculating the Base Figure for Construction and Architectural, Engineering, and Professional Services.

The classifications of work identified by Sound Transit are consistent with the classifications of work the City of Seattle anticipates requiring in the FFY 2010 for both Heavy/Civil Construction and Architectural, Engineering and Professional Services. Furthermore, according to the Seattle Department of Transportation (SDOT), any anticipated purchases from vendors for the Monorail Project will be defined as contracting opportunities and have been included in the construction dollar amount.

Sound Transit now utilizes only the North American Industrial Classification System (NAICS) codes that correspond to the original SIC codes in its analysis.

The City of Seattle's market area is the same as that identified by Sound Transit, (i.e. King County, Snohomish County, and Pierce County). The data sources identified by Sound Transit are also preferred by the City of Seattle. (i.e. the U.S. Census Bureau's County Business Patterns (CBP), the State of Washington's Office of Minority and Women's Business Enterprises Directory (OMWBE), and the custom census for the market area based on the 2005 NERA Economic Consulting (NERA) study.

Other than the CBP, OMWBE Directory and NERA custom census, the City of Seattle has no other data sources available to it for purposes of determining the availability of certified DBE firms. Consequently, we concluded that had the City performed the calculations itself, the results would have been no different than Sound Transit's results for the individual Construction and Professional Services base figure calculations. Therefore, for expediency, the City elected to use Sound Transit's Step One methodology as provided below.

METHODOLOGY

STEP 1-- DETERMINING A BASE FIGURE FOR THE OVERALL GOAL

In the Department's final rule, the Census Bureau's County Business Pattern (CBP) data base was identified as a tool available to DOT grant recipients for use in goal setting. CBP data reflects the availability of businesses within and throughout a county. In addition the City utilized Sound Transit's NERA-calculated data for the three county area from the Washington State Department of Transportation Study (WSDOT).

The City's DBE Goal has incorporated CBP and NERA data for three (3) counties-- Pierce County, Snohomish County and King County--because they represent the three counties comprising the main pool of certified DBE firms utilized by the City for Construction and Architecture, Engineering and Professional Services contracts.

Upon submitting its DBE Program in compliance with 49 CFR Part 26, the City identified two (2) major contracting categories (Construction and Professional Services) from which it derived primary NAICS codes. The City develops citywide construction projects. The vast majority of its efforts are focused on the planning, designing and execution of these projects. These major activities require the services of firms in the Construction industry and firms providing Architecture, Engineering and Professional Services to plan, design and manage the City's projects and services. These are also the activities for which the City seeks DOT financial assistance.

In determining the availability of certified Disadvantaged Business Enterprises (DBEs) in the NAICS codes covering Construction and Architecture, Engineering and Professional Services, the OMWBE Directory of certified firms was used. Sound Transit calculated the ratio that were DBEs from the OMWBE directory with business addresses located in the Sound Transit region, using the same Construction and Architecture, Engineering and Professional Services NAICS codes within the three counties. The City followed this same method.

The City's anticipated contracting opportunities for FFY 2010 are:

The South Lake Union Streetcar Extension Design (the "Streetcar") and

The Monorail Rehab Project (Conductor Rail) (the "Monorail")

Note: The \$314,000 in FTA funding received from ARRA for the South Lake Union Streetcar is for Preventative Maintenance on the current streetcar. The work is performed by public employees and is not a new contracting opportunity.

NAICS codes identified for the Base Figure Calculations:

In its DBE Program submittal, Sound Transit identified the North American Industry Classification System (NAICS) codes relevant to Sound Transit's construction contracts. The City adopted the following subset of the NAICS codes which are applicable to the City's identified projects:

Construction NAICS Codes (Monorail):

237130—Power and Communication Line and Related Structures
Construction

423830—Industrial Machinery and Equipment Merchant Wholesalers

532412—Construction, Mining, and Forestry Machinery And Equipment
Rental Leasing

Architecture, Engineering and Professional Services NAICS Codes (Streetcar and some Monorail):

541330—Engineering Services

DBE Availability by NAICS code:

Taking the information contained in the CBP and NERA for the three counties comprising the City's pool of Construction and Architecture, Engineering and Professional Services, NERA calculated the percentage availability of all DBE firms for construction and A/E & Professional Services contractors in the relevant NAICS codes above. In other words, in accordance with Part 26, the City must identify the availability of all firms in its market area for the types of work for which it intends to contract. Using the Census Bureau's County Business Patterns data, the total number of firms with business addresses located in the market area was identified within the applicable classification code showing their availability as a percentage of all firms in the NAICS codes:

Availability of Minority-Owned and Women-Owned Firms in the Three County Area by Selected Industries

NAICS Code	Description	% African-American	% Hispanic or Latino	% Asian or Pacific Islander	% Native American	% Minority	% White Female	% DBE
237130	Power and Communication Line and Related Structures Construction	0.52	1.28	2.33	3.18	7.31	5.63	12.93
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.13	0.07	0.27	0.07	0.54	3.03	3.57
532412	Construction, Mining, and Forestry	0.93	3.91	7.38	3.16	15.37	22.95	38.33

	Machinery And Equipment Rental and Leasing							
541330	Engineering Services	0.52	0.55	3.29	1.61	5.97	8.90	14.87

DBE availability based on total contract dollars weighted by NAICS code:

Following Sound Transit's methodology, the City then identified the contract dollars available for each NAICS code. The City then calculated the equivalent dollar values based on the DBE availability within each NAICS code. The City's projects represent a different mix of NAICS code work than Sound Transit. The City's percentage reflects the City's contract dollars available for the identified projects.

Since DBE availability varies by NAICS code, the Total DBE availability by percentage is multiplied by the contract dollars identified within the corresponding NAICS code. The resulting weighted DBE contract dollars are then summed and used to derive an overall contract goal for DBEs based on total available DBE contract dollars as a percentage of the total contract dollars.

NAICS Codes	NAICS Description	Contract Dollars	DBE % Availability	DBE \$ (based on %)	DBE % for Total
237130	Power and Communication Line and Related Structures Construction	\$294,100	12.93%	\$38,027	
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$430,000	3.57%	\$15,351	
532412	Construction, Mining, and Forestry Machinery And Equipment Rental and Leasing	\$45,000	38.33%	\$17,249	
541330	Engineering Services	\$447,063	14.87%	\$66,478	
Total		\$1,216,163		\$137,105	11.27%

To reiterate, each NAICS code dollar amount is multiplied by the percentage of DBEs available in the NAICS code to arrive at a dollar value representing the DBE availability. The total DBE available dollars are divided by the total contract

dollars available to arrive at an overall contract DBE goal for FFY 2010 of 11.27% (rounded to 11%).

**The City of Seattle's FFY 2010 Overall
DBE Goal
is
11%.**

STEP TWO – CONSIDERATION OF ADJUSTMENTS TO THE BASE FIGURE

The DOT'S DBE regulations also provide that once the base figure has been calculated, a recipient must examine all of the available evidence in its area to determine whether any adjustment is needed to the base figure in order to arrive at an overall goal.

Evidence from the 2005 NERA Availability Study.

The most recent availability study that is applicable to the City's region is the "Race, Sex and Business Enterprise: Evidence From The State of Washington" report prepared for the Washington State Department of Transportation (WSDOT) and completed by NERA Economic Consulting (NERA) in October 2005.

NERA used data about all minority-owned and women-owned businesses (MWBs) "as a proxy for DBE availability." *See page 2 of the NERA Report.* NERA used MWBE data even though there are or may be some differences between the number of MWBEs and number of DBEs, but considered those differences to be slight and not of significance for purposes of the study. The City concurs with NERA's approach.

NERA determined that DBE availability was 18.77% overall, and 19.59% for construction and 14.88 % for architecture, engineering and professional services.

No Additional Step 2 Adjustments

The City of Seattle reviewed the sample guidance provided by the DOT concerning additional adjustments to the Step One Base Figure. The City determined it did not have a basis for making any additional adjustments as it does not close out each project per year and does not have data available that would support such an adjustment (e.g. data related to the City of Seattle goals in relation to a disparity study).

FINAL OVERALL DBE GOAL

The City of Seattle is proposing an overall DBE goal of 11%. Participation will be achieved exclusively through the use of race-neutral means, consistent with the USDOT direction issued to recipients covered by the 9th Circuit Court.

RACE-NEUTRAL INITIATIVES

The City of Seattle will use the following race-neutral means in an effort to achieve its overall goal:

- 1) Ensure that DBEs are included on vendor mailing and solicitation lists.
- 2) Evaluate contracts for potential unbundling so as to increase opportunities for small firms, DBEs and non-DBEs, to compete for contracts.
- 3) Provide technical assistance to DBEs and non-DBEs through City-sponsored programs such as the Urban League's Contractor Development and Competitiveness Center (CDCC), and help them develop their business capability to better enable them to bid on and be competitive for projects (e.g., enhance their business and financial operating skills; promote long-term growth; develop technical and financial independence; and to teach them how to use electronic databases and the internet to obtain information about contracting opportunities).
- 4) Hold annual vendor forums to provide information and technical assistance to DBEs and non-DBEs regarding City contracting opportunities, practices, and procedures.
- 5) Outreach Plans:

To the extent there is no conflict with Part 26, the City of Seattle proposes to incorporate its Affirmative Efforts or Outreach requirements into FTA-funded contracting opportunities. The City's Outreach requirements further the City's commitment to encourage contracting practices that foster open competitive practices and a level playing field for its contractors. Contractors interested in doing business with the City are encouraged to be inclusive of disadvantaged business enterprises in their solicitation practices and to aspire to use disadvantaged business enterprises. However, there are no preferences granted or utilization requirements associated with these Outreach requirements. The City's Affirmative Efforts legislation provides for the requirement to perform outreach in soliciting to disadvantaged business enterprises on projects containing federal aid.

The contracting method used for the Monorail Project is authorized by chapter 39.04 of the Revised Code of Washington. This type of contract is referred to as a public works contract which involves advertisement of the project and competitive bidding. The Streetcar and a small amount of

contract dollars for the Monorail are for A, E & Professional Services as authorized under RCW 39.80.

In applying the DBE Program to the Projects, the City staff will attend pre-bid meetings to provide information and assistance to the potential bidders on affirmative efforts to outreach to DBEs. The City will work with the Prime contractor in its development of the Subcontracting Plan to determine appropriate race neutral measures to be taken on the subcontracting packages consistent with Part 26. The City will also provide the contractor with examples of affirmative efforts activities, consistent with the race-neutral measures the City will engage in, that will be included in its subcontracts in an effort to foster open competitive contracting practices. The Contractors provide information on the Outreach plan at the time of bid to identify the affirmative efforts they have engaged in with DBEs, minority and women-owned firms.

City staff evaluates Outreach efforts on all Construction Contracts over \$300,000. The Engineer's Estimate, which is provided by the Department administering the project, serves as the benchmark for analyzing Outreach Plans. For each bid the costs of a project are computed by estimating the cost of every construction or supply activity. In collaboration with the CDCC, the Contract Analyst staff use the Engineer's Estimates to more accurately assess the low bidder's outreach efforts relative to the types of work available under the contract.

Additionally, no penalties, damages, or sanctions will be imposed for a contractor who does not meet any goal the contractor may provide. Except for the standard DBE reporting form the contractor must provide in accordance with Part 26, any other reporting requirement the City requests as part of its subcontracting Outreach requirement would apply to both DBE and non-DBE firms.

The other portion of the City's Outreach requirement that does not affect its compliance with Part 26 is outreach in the employment of women and minority individuals. The City will continue to require contractors to perform outreach to women and minorities from an employment and subcontractor perspective.

PUBLIC PARTICIPATION

We will publish our DBE Goal in the Daily Journal of Commerce, the City's official newspaper for advertisement of bid opportunities, and post a Notice on the City of Seattle's Contracting Services Division web page.